

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>CIVIL ACTION NO.:</b>
<b>v.</b>	)	
	)	<b>JUDGE:</b>
<b>CITY OF FOSTORIA, OHIO,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>THE STATE OF OHIO,</b>	)	
	)	
<b>Defendants.</b>	)	

**COMPLAINT**

The United States of America ("United States"), by authority of the Attorney General of the United States and through the undersigned attorneys, acting on behalf of the United States Environmental Protection Agency ("U.S. EPA"), alleges as follows:

**NATURE OF ACTION**

1. This is a civil action pursuant to Sections 309(b) and (d) of the Clean Water Act (the "Act"), 33 U.S.C. §§ 1319(b) and (d), for injunctive relief and civil penalties against the City of Fostoria, Ohio ("Fostoria"), for violations of Section 301 of the Act, 33 U.S.C. § 1311, and certain terms and conditions of the National Pollutant Discharge Elimination System ("NPDES") permits issued to Fostoria pursuant to Section 402 of the Act, 33 U.S.C. § 1342, for its wastewater treatment plant and sewerage collection system in Fostoria, Ohio, which discharges into the East Branch of the Portage River and Caples-Flack Ditch. The United States also seeks

injunctive relief and civil penalties from Fostoria for violations of Administrative Order No. V-W-01-AO-14 issued by U.S. EPA on September 27, 2001, and Administrative Order No. V-W-03-AO-06 issued by U.S. EPA on September 30, 2003, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a). The State of Ohio has been joined as a party to this action under Section 309(e) of the Act, 33 U.S.C. § 1319(e).

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in the Northern District of Ohio, Western Division, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395, because Fostoria is located in this judicial district and the violations alleged in this complaint occurred in this district.

4. Notice of the commencement of this action has been given to the State of Ohio as required by Section 309(b) of the Act, 33 U.S.C. § 1319(b).

### **DEFENDANTS**

5. Fostoria is a municipal corporation organized under the laws of the State of Ohio, and is located in Seneca, Wood, and Hancock Counties. Fostoria is a "municipality" as that term is defined in Section 502(4) of the Act, 33 U.S.C. § 1362(4).

6. The State of Ohio is a "State" as that term is defined in Section 502(3) of the Act, 33 U.S.C. § 1362(3).

7. Fostoria and the State of Ohio are each a "person" as defined in Section 502(5) of the Act, 33 U.S.C. § 1362(5).

## **STATUTORY AND REGULATORY BACKGROUND**

8. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into a navigable water, except in compliance with, among other things, the terms and conditions of an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

9. Section 402 of the Act, 33 U.S.C. § 1342, provides that U.S. EPA, or an authorized state, may issue NPDES permits for the discharge of pollutants. NPDES permits require that such discharges meet the requirements of the Act.

10. At all times relevant to this complaint, Ohio has been and continues to be authorized by the Administrator of EPA to administer the NPDES permit program for discharges into navigable waters within its jurisdiction, pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b).

11. Sections 309(a) and (b) of the Act, 33 U.S.C. § 1319(a) and (b), authorize the Administrator of U.S. EPA to issue an administrative order or to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation of Sections 301 of the Act, 33 U.S.C. §§ 1311.

12. Sections 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), provide that any person who violates Section 301 of the Act, 33 U.S.C. §§ 1319, or any Administrative Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), shall be subject to injunctive relief and the assessment of a civil penalty not to exceed (i) \$27,500 per day for each violation that occurred between January 30, 1997, and March 15, 2004, and (ii) \$32,500 for each violation occurring on and after March 15, 2004.

### GENERAL ALLEGATIONS

13. Fostoria owns and operates a wastewater treatment plant (the “Plant” or “WWTP”) located at 1301 Perrysburg Road, Fostoria, Wood County, Ohio, which treats wastewater for the City of Fostoria, Wood County, Ohio. Fostoria also owns and operates a sewage collection system for the collection and transmission of sewage and stormwater runoff.

14. The WWTP and sewage collection system comprise a “treatment works” as that term is defined in Section 212(2) of the Act, 33 U.S.C. § 1292(2), and a “publicly owned treatment works” as defined in 40 C.F.R. § 403.3(o), and used in Section 301(b)(1)(B) of the Act, 33 U.S.C. § 1311(b)(1)(B).

15. At all times relevant to this complaint, Fostoria “discharged” “pollutants,” within the meaning of Sections 502(6) and (12) of the Act, 33 U.S.C. § 1362(6) and (12), and 40 C.F.R. § 122.2, into the East Branch of the Portage River and Caples-Flack Ditch from outfalls and combined sewer overflow (“CSO”) stations. Fostoria discharged wastewater that received primary and secondary treatment from a final effluent outfall designated as Outfall 001. Fostoria discharged wastewater from CSO stations designated as Outfalls 004, 005, 006, 007, and 008.

16. Outfall 001 and CSO Outfalls 004 through 008 are all “point sources” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

17. The East Branch of the Portage River and Caples-Flack Ditch are “navigable waters” as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and are part of the “waters of the United States” within the meaning of 40 C.F.R. § 122.2.

18. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Ohio Environmental Protection Agency (“Ohio EPA”) issued to Fostoria NPDES Permit No. 2PD00031\*MD (“1996

NPDES Permit”), which became effective on November 1, 1996. Thereafter, Ohio EPA issued to Fostoria a renewed NPDES permit, numbered 2PD00031\*ND (“2004 NPDES Permit”), which became effective on August 1, 2004, and which currently remains in effect. (The 1996 NPDES Permit and the 2004 NPDES Permit collectively are referred to herein as “Permits” or “NPDES Permits”).

### **COUNT I**

#### **(Discharges from the WWTP in Violation of Effluent Limitations and/or Monitoring Requirements in Fostoria’s NPDES Permits)**

19. Paragraphs 1 through 18, inclusive, are realleged and incorporated herein by reference.

20. Fostoria’s NPDES Permits establish effluent limitations and/or monitoring requirements for numerous parameters and pollutants at Outfall 001 at the Plant, including, but not limited to the following: total suspended solids, nitrogen, oil and grease, zinc, ammonia, chromium (total recoverable and dissolved hexavalent), phosphorus, fecal coliform, nickel, carbonaceous biochemical oxygen demand, lead, copper, cadmium, cyanide, mercury, total residual chlorine, pH, temperature, and dissolved oxygen.

21. On numerous occasions from at least January 1, 1999, and continuing through the present time, Fostoria discharged pollutants from Outfall 001 of its WWTP in violation of the effluent limitations and/or monitoring requirements set forth in its NPDES Permits.

22. These discharges were not authorized by Fostoria’s NPDES Permits, and therefore, constitute violations of the conditions of its NPDES Permits and Section 301 of the Act, 33 U.S.C. § 1311.

23. Pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), Fostoria is liable for injunctive relief and civil penalties of up to \$27,500 per day for each violation of its NDPEs Permits that occurred between January 30, 1997, and March 15, 2004, and up to \$32,500 for each violation occurring on and after March 15, 2004.

24. Pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e), the State of Ohio is liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment, entered against Fostoria in this action to the extent that the laws of Ohio prevent Fostoria from raising revenues needed to comply with such judgment.

## **COUNT II**

### **(Failure to Comply with Monitoring and Reporting Requirements for Pollutant Concentration)**

25. Paragraphs 1 through 24, inclusive, are realleged and incorporated herein by reference.

26. Fostoria's 1996 NPDES Permit required Fostoria to calculate 7-day and 30-day concentration limitations for certain pollutants based on the arithmetic average, weighted by flow, of the samples taken. Fostoria was required to report to Ohio EPA the results of its sampling using the appropriate method of calculation.

27. On numerous occasions from January 1, 1999, through August 1, 2004, Fostoria failed to accurately calculate 7-day and 30-day concentrations and therefore failed to accurately report 7-day and 30-day concentrations of pollutants.

28. Fostoria's failure to accurately report concentrations in accordance with the General Conditions of its 1996 NPDES Permit violated that Permit and Section 301 of the Act, 33 U.S.C. § 1311.

29. Pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), Fostoria is liable for injunctive relief and civil penalties of up to \$27,500 per day for each violation of its 1996 NPDES Permit that occurred between January 30, 1997, and March 15, 2004, and up to \$32,500 for each violation occurring on and after March 15, 2004.

30. Pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e), the State of Ohio is liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment, entered against Fostoria in this action to the extent that the laws of Ohio prevent Fostoria from raising revenues needed to comply with such judgment.

### **COUNT III**

#### **(Failure to Comply with CSO Monitoring Requirements)**

31. Paragraphs 1 through 30, inclusive, are realleged and incorporated herein by reference.

32. Fostoria's NPDES Permits require Fostoria to monitor discharges from its CSO Outfalls.

33. On numerous occasions from at least January 1, 1999, and continuing through the present time, Fostoria failed to monitor discharges from its CSO Outfalls in accordance with the requirements of its NPDES Permits.

34. Fostoria's failure to monitor discharges from CSO Outfalls in accordance with the requirements of its applicable NPDES Permits violates the conditions of its Permits and Section 301 of the Act, 33 U.S.C. § 1311.

35. Pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), Fostoria is liable for injunctive relief and civil penalties of up to \$27,500 per day for each violation of its NPDES Permits that occurred between January 30, 1997, and March 15, 2004, and up to \$32,500 for each violation occurring on and after March 15, 2004.

36. Pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e), the State of Ohio is liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment, entered against Fostoria in this action to the extent that the laws of Ohio prevent Fostoria from raising revenues needed to comply with such judgment.

#### **COUNT IV**

##### **(Failure to Operate and Maintain the WWTP and Sewerage Collection System to Minimize Pollutant Loading During Wet Weather: Failure to Implement the Nine Minimum Controls)**

37. Paragraphs 1 through 36, inclusive, are realleged and incorporated herein by reference.

38. Fostoria's NPDES Permits require Fostoria to operate and maintain its WWTP and sewerage collection system so that the total loading of pollutants discharged during wet weather is minimized. Section II,E of Fostoria's 1996 NPDES Permit and Section II,F. of Fostoria's 2004 NPDES Permit require Fostoria to implement nine minimum controls for CSOs in order to minimize loading.

39. Fostoria failed to implement the nine minimum controls.



40. Fostoria's failure to implement the nine minimum controls violates the conditions of Fostoria's NPDES Permits and Section 301 of the Act, 33 U.S.C. § 1311.

41. Pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), Fostoria is liable for injunctive relief and civil penalties of up to \$27,500 per day for each violation of its NPDES Permits that occurred between January 30, 1997, and March 15, 2004, and up to \$32,500 for each violation occurring on and after March 15, 2004.

42. Pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e), the State of Ohio is liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment, entered against Fostoria in this action to the extent that the laws of Ohio prevent Fostoria from raising revenues needed to comply with such judgment.

#### **COUNT V**

##### **(Discharging in Amounts that Impair Designated Instream or Downstream Water Uses)**

43. Paragraphs 1 through 42, inclusive, are realleged and incorporated herein by reference.

44. The East Branch of the Portage River has been designated as a "primary contact" receiving stream. Based on that designation, the East Branch of the Portage River should be suitable for full-body contact recreation, including but not limited to swimming and canoeing.

45. Fostoria's NPDES Permits prohibit Fostoria from discharging effluent in amounts that impair designated instream or downstream water uses.

46. On numerous occasions from January 1, 1999, through the present, Fostoria discharged untreated wastewater from its CSO Outfalls in amounts that impaired the designated use of the East Branch of the Portage River.

47. Fostoria's CSO discharges violated the conditions of its NPDES Permits and Section 301 of the Act, 33 U.S.C. § 1311.

48. Pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), Fostoria is liable for injunctive relief and civil penalties of up to \$27,500 per day for each violation of its NPDES Permits that occurred between January 30, 1997, and March 15, 2004, and up to \$32,500 for each violation occurring on and after March 15, 2004.

49. Pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e), the State of Ohio is liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment, entered against Fostoria in this action to the extent that the laws of Ohio prevent Fostoria from raising revenues needed to comply with such judgment.

#### **COUNT VI**

##### **(Unauthorized Discharges from CSO Outfalls)**

50. Paragraphs 1 through 49, inclusive, are realleged and incorporated herein by reference.

51. Fostoria's NPDES Permits authorize it to discharge wastewater from its CSO Outfalls only during wet weather periods when the flow in the sewer system exceeds its capacity.

52. On numerous occasions from January 1, 1999, through the present, Fostoria discharged wastewater during dry weather.

53. Fostoria's unauthorized CSO discharges violated the conditions of its NPDES Permits and Section 301 of the Act, 33 U.S.C. § 1311.

54. Pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), Fostoria is liable for injunctive relief and civil penalties of up to \$27,500 per day for each

violation of its NPDES Permits that occurred between January 30, 1997, and March 15, 2004, and up to \$32,500 for each violation occurring on and after March 15, 2004.

55. Pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e), the State of Ohio is liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment, entered against Fostoria in this action to the extent that the laws of Ohio prevent Fostoria from raising revenues needed to comply with such judgment.

## **COUNT VII**

### **(Violation of Administrative Orders)**

56. Paragraphs 1 through 55, inclusive, are realleged and incorporated herein by reference.

57. On or about September 27, 2001, U.S. EPA issued Administrative Order No. V-W-01-AO-14 to Fostoria, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), finding that Fostoria had exceeded its final effluent discharge limitations at Outfall 001 and had improperly bypassed secondary treatment.

58. Administrative Order No. No. V-W-01-AO-14 required Fostoria, inter alia, to:

(1) comply with the terms and conditions of its 1996 NPDES Permit by no later than September 30, 2002; (2) submit a detailed plan of action describing the actions the City would take to come into compliance with its 1996 NPDES Permit; (3) submit a schedule to eliminate all secondary treatment bypasses; (4) submit a study of the character and volume of pollutants contributed to its WWTP from all industrial users; and (5) undertake a number of additional action items with respect to its pretreatment program.

59. On or about September 30, 2003, U.S. EPA issued Administrative Order No. V-W-03-AO-06 to Fostoria, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), finding that Fostoria discharged an excessive quantity of untreated wastewater from its CSO Outfalls, failed to properly monitor and sample wet weather flows at its CSO Outfalls, discharged wastewater from its CSO Outfalls during dry weather, and continue to exceed its final effluent limits at Outfall 001.

60. Administrative Order No. V-W-03-AO-06 required Fostoria, inter alia, to:

(1) comply with the terms and conditions of its 1996 NPDES Permit by no later than September 30, 2004; (2) monitor its CSO Outfalls in accordance with the requirements of its 1996 NPDES Permit; (3) monitor Outfall 001 for fecal coliform every month of the year with the same frequency described in Fostoria's 1996 NPDES Permit and four times per month upstream and downstream of Outfall 001; (4) monitor total daily precipitation at the WWTP; (5) submit a detailed plan of action describing the actions the City would take to come into compliance with its 1996 NPDES Permit; and (6) submit specified information regarding overflows, mercury control, and the operation and maintenance of its WWTP and collection system.

61. Fostoria failed to comply with all of the requirements of Administrative Order Nos. V-W-01-AO-14 and V-W-03-AO-06.

62. Pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), Fostoria is liable for injunctive relief and civil penalties of up to \$27,500 per day for each violation of the Administrative Orders that occurred between January 30, 1997, and March 15, 2004, and up to \$32,500 for each violation occurring on and after March 15, 2004.

63. Pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e), the State of Ohio is liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment, entered against Fostoria in this action to the extent that the laws of Ohio prevent Fostoria from raising revenues needed to comply with such judgment.

**RELIEF REQUESTED**

**WHEREFORE**, Plaintiff, the United States of America, respectfully requests that this Court:

- (1) Enjoin Defendant, Fostoria, permanently from further violations of its NPDES Permit, the Act, and applicable regulations promulgated thereunder;
- (2) Enjoin Defendant, Fostoria, permanently from any discharge of pollutants except as expressly authorized by its NPDES Permit, the Act, and applicable regulations promulgated thereunder;
- (3) Order Defendant, Fostoria, to undertake and complete expeditiously all actions necessary to upgrade its WWTP and sewage collection system and ensure that it operates in compliance with its NPDES Permit, the Act, and all applicable regulations promulgated thereunder;
- (4) Order Defendant, Fostoria, to pay civil penalties not to exceed \$27,500 per day for each day of each violation of its NPDES Permits, the Act, and applicable regulations promulgated thereunder, that occurred between January 30, 1997, and March 15, 2004, and \$32,500 per day for each such violation that occurred on or after March 15, 2004.

(5) Order the State of Ohio to pay any judgment, or any expenses incurred as a result of complying with any judgment, entered against Fostoria in this action to the extent that the laws of Ohio prevent Fostoria from raising revenues needed to comply with such judgment; and

(6) Grant Plaintiff such other relief as it deems just and proper.

Respectfully submitted,

---

SUE ELLEN WOOLDRIDGE  
Assistant Attorney General  
Environment and Natural  
Resources Division  
U.S. Department of Justice

---

ANNETTE M. LANG  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural  
Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
(202) 514-4213

GREGORY A. WHITE  
United States Attorney  
Northern District of Ohio

---

GUILLERMO "BILL" J. ROJAS  
Assistant United States Attorney  
Northern District of Ohio  
Four Seagate, Ste. 308  
Toledo, OH 43604-2624  
(419) 259-6376

OF COUNSEL:

DEIRDRE FLANDERS TANAKA  
Associate Regional Counsel  
United States Environmental  
Protection Agency  
Region V (CA-29)  
77 West Jackson Blvd.  
Chicago, IL 60604

ROBERT C. KLEPP  
Office of Civil Enforcement  
United States Environmental  
Protection Agency  
1200 Pennsylvania Ave., NW  
Washington, DC 20460